

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES -- GENERAL

Case No. **CV 13-7968-JFW (JCx)**

Date: November 12, 2013

Title: Oscar Gonzalez -v- Home Depot U.S.A., Inc., et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS (IN CHAMBERS):

**ORDER REMANDING ACTION TO LOS ANGELES
COUNTY SUPERIOR COURT**

On September 24, 2013, Plaintiff Oscar Gonzalez ("Plaintiff") filed a Complaint against Defendant Home Depot U.S.A. Inc. ("Defendant") in Los Angeles County Superior Court. On October 29, 2013, Defendant filed a Petition and Notice of Removal of Action ("Notice of Removal"), alleging that this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a).

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986). "Because of the Congressional purpose to restrict the jurisdiction of the federal courts on removal, the statute is strictly construed, and federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996) (citations and quotations omitted). There is a strong presumption that the Court is without jurisdiction unless the contrary affirmatively appears. See *Fifty Associates v. Prudential Insurance Company of America*, 446 F.2d 1187, 1190 (9th Cir. 1990). As the party invoking federal jurisdiction, Defendant bears the burden of demonstrating that removal is proper. See, e.g., *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

Diversity jurisdiction founded under 28 U.S.C. § 1332(a) requires that (1) all plaintiffs be of different citizenship than all defendants, and (2) the amount in controversy exceed \$75,000. See 28 U.S.C. § 1332(a). When, as in this case, "the complaint does not demand a dollar amount, the removing defendant bears the burden of proving by a preponderance of evidence that the amount in controversy exceeds [\$75,000]." *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997); see also 28 U.S.C. § 1446(c)(2). "The district court may consider whether it is 'facially apparent' from the complaint that the jurisdictional amount is in controversy. If not, the court may

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consider facts in the removal petition, and may ‘require parties to submit summary-judgment-type evidence relevant to the amount in controversy at the time of removal.’” *Id.* at 377 (quoting *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335-36 (5th Cir. 1995)); see also *Valdez v. Allstate Ins. Co.* 372 F.3d 1115, 1117 (9th Cir. 2004) (“Since it [was] not facially evident from the complaint that more than \$75,000 [was] in controversy, Allstate should have prove[n], by a preponderance of the evidence, that the amount in controversy [met] the jurisdictional threshold.”) (internal quotation omitted). “Conclusory allegations as to the amount in controversy are insufficient.” *Matheson v. Progressive Specialty Ins.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

Defendant contends that the amount in controversy exceeds \$75,000, citing the allegations of Plaintiff’s Complaint in which he seeks damages for lost wages and emotional distress, attorneys’ fees, and punitive damages. However, according to Defendant’s own calculations, Plaintiff would only be entitled to back pay in the amount of \$6,942 at the time of removal or \$34,710 at the time of trial, well below the jurisdictional minimum. For the remainder of the amount in controversy, Defendant merely speculates as to the amounts Plaintiff would recover for front pay, emotional distress, attorneys’ fees, and punitive damages. The Court concludes that Defendant’s conclusory allegations do not prove by a preponderance of the evidence that the jurisdictional amount is satisfied. See, e.g., *Melendez v. HMS Host Family Restaurants, Inc.*, 2011 WL 3760058, at *3 (C.D. Cal. Aug. 25, 2011) (concluding that Defendant’s speculative assertions regarding front pay, which did not consider mitigating circumstances, were insufficient to show that the plaintiff would more likely than not receive an award for front pay); *Conrad Assocs. v. Hartford Acc. & Indem. Co.*, 994 F. Supp. 1196, 1199 (N.D. Cal. 1998) (holding that defendants could not meet the burden of demonstrating the amount in controversy “simply by pointing out that the complaint seeks punitive damages and that any damages awarded under such a claim could total a large sum of money.”); *Gordon v. Allstate Insurance Co.*, 2010 WL 1949164 (D. Ariz. May 13, 2010) (holding that “while verdicts in similar cases can be probative, they are not determinative; Defendants must point to facts that would support a \$75,000 or higher punitive damage award in this case.”).

Accordingly, this action is **REMANDED** to Los Angeles County Superior Court for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c).

IT IS SO ORDERED.